

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THOMAS RANDALL KENT,

Defendant.

No. 1:07:CR:261-02

Hon. Robert J. Jonker

MOTION TO REDUCE SENTENCE PURSUANT TO
FEDERAL RULE OF CRIMINAL PROCEDURE 35(b)
WITH SUPPORTING BRIEF

The United States of America by and through its attorneys, Donald A. Davis, United States Attorney for the Western District of Michigan, and B. René Shekmer, Assistant United States Attorney, moves this Honorable Court to reduce the sentence of Defendant Thomas Randall Kent pursuant to Federal Rule of Criminal Procedure 35(b) and in support of this motion states as follows:

1. On November 14, 2007, Leobardo Medina-Hernandez, Thomas Randall Kent, and five co-conspirators were indicted and charged with conspiracy to distribute 100 or more kilograms of marijuana in violation of Title 21, United States Code, Sections 846, 841(a)(1), and 841(b)(1)(B). Thomas Randall Kent was the leader of the marijuana conspiracy in Michigan. Leobardo Medina-Hernandez was the source of the marijuana in Arizona. On February 12, 2008, a sixth co-defendant was added by way of Superseding Indictment. Thomas Kent and all of his co-defendants, with the exception of Leobardo Medina-Hernandez, plead guilty in late 2007 and 2008. Leobardo Medina-

Hernandez, from the Tucson, Arizona area, remained a fugitive despite a number of attempts by ICE to apprehend him.

2. Thomas Kent was sentenced on June 25, 2008, to 178 months in prison (35 @ 1). Thomas Kent appealed the reasonableness of his sentence and the sentence was affirmed. *United States v. Thomas Randall Kent*, # 08-1952, Order filed on June 2, 2010. After the conclusion of his appeal, Thomas Kent began to cooperate with the Government in earnest.

3. Thomas Kent made repeated recorded telephone calls from prison to Leobardo Medina-Hernandez, who was in Mexico. Thomas Kent was successful in convincing Leobardo Medina-Hernandez to come into the United States and to meet with a person that Thomas Kent said that he was sending down to Arizona so that they could begin running loads of marijuana to Michigan again. Leobardo Medina-Hernandez ultimately came into Arizona to meet with Thomas Kent's new associate, an undercover ICE agent. Leobardo Medina-Hernandez was arrested in Tucson, Arizona, on January 18, 2011.

4. Thomas Kent repeatedly assured the Government, through his counsel, that he was willing and prepared to testify against Leobardo Medina-Hernandez in the event that Leobardo Medina-Hernandez went to trial. Leobardo Medina-Hernandez entered a plea of guilty on May 13, 2011 and was sentenced on August 25, 2011, to 108 months in prison (29 @ 11 = 97-121 months). Due to his conviction, Leobardo Medina-Hernandez, a Mexican national with an alien registration number, will be deported upon completion of his sentence. Without the assistance of Thomas Kent, it is

highly unlikely that Leobardo Medina-Hernandez would ever have been apprehended in this case.

GOVERNMENT'S BRIEF IN SUPPORT OF
MOTION TO REDUCE SENTENCE PURSUANT TO
FEDERAL RULE OF CRIMINAL PROCEDURE 35(b)

Federal Rule of Criminal Procedure 35(b) provides:

(b) Reducing a Sentence for Substantial Assistance.

(1) In General. Upon the government's motion made within one year of sentencing, the court may reduce a sentence if the defendant, after sentencing, provided substantial assistance in investigating or prosecuting another person.

(2) Later Motion. Upon the government's motion made more than one year after sentencing, the court may reduce a sentence if the defendant's substantial assistance involved:

(A) information not known to the defendant until one year or more after sentencing;

(B) information provided by the defendant to the government within one year of sentencing, but which did not become useful to the government until more than one year after sentencing; or

(C) information the usefulness of which could not reasonably have been anticipated by the defendant until more than one year after sentencing and which was promptly provided to the government after its usefulness was reasonably apparent to the defendant.

(3) Evaluating Substantial Assistance. In evaluating whether the defendant has provided substantial assistance, the court may consider the defendant's presentence assistance.

(4) Below Statutory Minimum. When acting under Rule 35(b), the court may reduce the sentence to a level below the minimum sentence established by statute.

Fed. R. Crim. P. 35(b).

Defendant Thomas Kent's cooperation, upon which this motion is based, began after sentencing and has been on-going. Thomas Kent was sentenced pursuant to the United States Sentencing Guidelines; and therefore, a motion for a sentence reduction brought by the Government is a prerequisite to this Court having jurisdiction to reduce the sentence pursuant to Fed. R. Crim. P. 35(b). United States v. Levy, 904 F.2d 1026 (6th Cir. 1990).

In considering the amount of any reduction of sentence to be granted, the Court is, of course, to be driven by its evaluation of the extent of the Defendant's cooperation and "assistance in the investigation or prosecution of another person." However, the decision of whether, and to what extent, the Defendant's sentence should be reduced is left to the sound discretion of the Court.

Wherefore, the Government respectfully requests that Thomas Kent be given credit for his substantial assistance to the Government in the investigation and prosecution of another person pursuant to Federal Rule of Criminal Procedure 35(b). While the Government recognizes that it is solely within the discretion of the Court whether or not to grant such a motion and, if granted, what level of departure to make,

the Government recommends a 3 level reduction from the Defendant's adjusted offense level of 35 and criminal history category I.

Respectfully submitted,

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United States Attorney

Dated: January 20, 2012

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